

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:11-CT-3111-D

TERRY CHARLES COLEMAN,)
Plaintiff,)
v.) **ORDER**
ROBERT C. LEWIS, et al.,)
Defendants.)

On June 15, 2011, Terry Charles Coleman (“Coleman” or “plaintiff”) filed this action pursuant to 42 U.S.C. § 1983 [D.E. 1], along with a motion to appoint counsel [D.E. 3]. Coleman seeks leave to proceed in forma pauperis [D.E. 2]. On June 22, 2011, Coleman moved for return of the exhibits attached to his complaint [D.E. 6]. On December 20, 2011, Coleman filed a motion to dismiss this action without prejudice, conditioned on a refund of the filing fee paid [D.E. 11].

A plaintiff may dismiss an action voluntarily, without an order of the court, by filing a notice of dismissal at any time before the adverse party serves an answer or a motion for summary judgment. Fed. R. Civ. P. 41(a)(1)(A)(i). Otherwise, an action shall not be dismissed on the plaintiff's request except upon court order. Fed. R. Civ. P. 41(a)(2). Defendants have not filed an answer or motion for summary judgment. Thus, the court will allow the voluntary dismissal, and directs the clerk's office to refund to Coleman the filing fee he paid and to return the exhibits attached to his complaint.

In sum, the court GRANTS Coleman's motion for return of documents and motion to dismiss [D.E. 6, 11], and this action is DISMISSED WITHOUT PREJUDICE. Coleman's motion for appointment of counsel [D.E. 3] is DENIED AS MOOT. The Clerk of Court is DIRECTED to close

this case.

SO ORDERED. This 7 day of January 2012.



JAMES C. DEVER III
Chief United States District Judge